

**BEFORE THE  
NATIONAL LABOR RELATIONS BOARD  
REGION 27**

ASSOCIATION OF COMMUNITY  
ORGANIZATIONS FOR REFORM NOW, INC.,<sup>1</sup>

Employer,

Case No. 27-RC-8153  
(Formerly, 12-RC-8743)

and

INDUSTRIAL WORKERS OF THE WORLD, IU 650,

Petitioner.

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Undersigned.

Upon the entire record in this proceeding, the Undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

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<sup>1</sup> The Employer is also referred to by the acronym ACORN, Inc.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All fulltime and regular parttime field organizers employed by the Employer at its St. Petersburg, Florida office.

EXCLUDED: All office clericals, guards, lead organizers, head organizers and all other supervisors as defined in the Act.<sup>2</sup>

## **STATEMENT OF THE CASE**

### Background:

At the hearing, the parties stipulated that ACORN, Inc., is a non-profit Arkansas corporation with an office and place of business in St. Petersburg, Florida. The Employer is engaged in the community organization of low and moderate-income families in various states, including Florida. During the past 12 months, the Employer derived gross revenues in excess of \$250,000 and purchased and received at its St. Petersburg, Florida facility, goods and materials valued in excess of \$5,000, directly from points located outside the State of Florida.

The parties stipulated that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act. The parties further stipulated that there is no history of collective bargaining for any of the Employer's Florida facilities and that there are no representation petitions pending relating to other ACORN operations. Finally, the

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<sup>2</sup> The parties stipulated to the exclusion of head organizers and lead organizers from the unit. Although the Employer does not currently employ any lead organizers at the St. Petersburg facility or at its other facilities in Florida, the parties stipulated to the exclusion of that classification without specifying the exact basis for that exclusion. In light of the parties' agreement, I shall exclude lead organizers from the unit description found appropriate solely on that basis. With regard to head organizers, while the parties again did not stipulate as to the exact basis for excluding this classification, it is apparent that head organizers possess authority as supervisors within the meaning of Section 2(11) of the Act, and I shall exclude them as such. In that regard, as is set forth below, the uncontroverted evidence shows that head organizers have and exercise the authority to hire field organizers, subject only to approval of the national office to increase the level of staffing.

Petitioner stated that it was willing to proceed to an election in any unit found appropriate by the Board.

The sole issue to be decided herein is whether the scope of the petitioned-for unit is appropriate. The Petitioner seeks to represent all field organizers employed by the Employer at its St. Petersburg office only. While the Employer stipulated to the appropriateness of the composition of the unit, it contends that the only appropriate unit is a statewide unit of all field organizers. ACORN currently has facilities in St. Petersburg, Jacksonville, Miami and Ft. Lauderdale.<sup>3</sup> The Employer recently permanently laid off the three field organizers at the Jacksonville office for non-performance of their job duties. Thus, it currently only has a head organizer at that facility. ACORN does intend to hire and train new field organizers for the Jacksonville facility, but has not yet done so. The Employer is also exploring funding opportunities for opening offices in Tampa, Orlando, Palm Beach and Orange County, Florida.

Facts:

ACORN currently is active in 23 states, at 41 field offices. It is governed by a national board, which is made up of two representatives from each state that has an active state board and the Association President. The Employer's headquarters is in New Orleans, Louisiana. The national field director is Helene O'Brien, whose office is in Phoenix, Arizona. O'Brien is responsible for exploratory work for opening ACORN offices in new cities and oversight of those offices after they open. This includes interviewing potential new staff at offices being opened, sending staff prospects for three-months on-the-job training in established field offices

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<sup>3</sup> The parties stipulated to the following distances between the Employer's Florida operations: St. Petersburg to Jacksonville is approximately 210 miles; St. Petersburg to Miami is approximately 251 miles; St. Petersburg to Ft. Lauderdale is approximately 238 miles; Ft. Lauderdale to Jacksonville is approximately 320 miles; Ft. Lauderdale to Miami is approximately 25 miles; and Jacksonville to Miami is approximately 345 miles.

elsewhere in the country and assigning these trainees to a field office upon completion of their training. O'Brien is also consulted by state directors when they are in the process of hiring new head organizers at existing offices.

Alexander "Pat" McCoy is the state director for the state of Florida. McCoy, along with other state directors, reports to O'Brien. McCoy actually works out of his home office in South Carolina and makes weekly visits lasting one to two days to the four Florida offices. He also is in daily telephone contact with the head organizers at each of the four Florida offices. Reporting directly to McCoy are the four Florida facility head organizers. As discussed below, at the time of the hearing there were nine field organizers employed in the Employer's Florida offices.

ACORN opened its Miami office in the summer of 1998. That office has five field organizers who report directly to head organizer Eric Thompson. In January 2001, ACORN opened its Ft. Lauderdale office, which serves Broward County, Florida. There is one field organizer in Ft. Lauderdale, who reports to head organizer Elizabeth Androdis. The Jacksonville office opened on September 11, 2001. As noted above, the three Jacksonville field organizers were recently laid off for non-performance. The head organizer to whom the now laid off field organizers in Jacksonville reported is Henrietta Hill-Murray. Hill-Murray is still working in the Jacksonville office, and ACORN intends to hire new field organizers to work under her direction when it is financially feasible. The St. Petersburg office opened in late-October 2001. The head organizer in St. Petersburg is Christine Allamanno. Allamanno is currently working parttime and is considered temporary until the Employer can train one of the three field organizers in that

office to replace her or until the Employer can find a suitable replacement elsewhere.<sup>4</sup> The three field organizers reporting directly to Allamanno are Wayne Bright, Phil Romano and Andy Gibbs.

All field organizers, including those in St. Petersburg, are responsible for going door to door, four to six hours a day, in selected communities to solicit dues-paying members for ACORN and to try to get enough interested people to organize into community action groups to resolve that community's main grievances. The performance goal is for each field organizer to sign up two dues paying members per day, preferably with automatic checking account deductions. The field organizers also help these community groups organize fundraising activities such as bake sales, garage sales, chicken dinners, dances and raffles. The organizers also go into middle and upper income neighborhoods, knocking on doors to solicit donations for ACORN. Finally, the field organizers work to turn out people for specific events, including local government meetings, protest and rallies. Field organizers are also called upon to work at the statewide level on certain campaigns, such as enacting specific statewide legislation. Generally, these statewide campaigns are done in conjunction with other community-based organizations, labor unions, AARP, and similar groups. There is no record evidence as to how often these campaigns may occur or what interaction may exist between offices during such campaigns. The St. Petersburg field organizers have not yet been called upon to work on such statewide campaigns outside the St. Petersburg area, because of their inexperience.

The Employer has a nationwide computer system, which all of its field organizers, including those in St. Petersburg, can access. The national ACORN organization posts training materials and national campaign agendas on the system, which field organizers are expected to review. The field organizers also are encouraged to post information on that system concerning methods for organizing and fundraising that they have found beneficial, and they are encouraged

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<sup>4</sup> The uncontroverted testimony establishes that despite her parttime and temporary status, Allamammo possesses and exercises the same authority as other head organizers.

to read and employ techniques that other field organizers have posted. All field organizers also attend two annual training conferences and the biannual ACORN convention. The Employer holds an annual training conference in December in New Orleans called “year end year begin.” The purpose of this conference is to analyze the previous year’s reports and performance and set goals for the up-coming year. In the most recent “year end year begin” conference, the Employer announced that it would be providing all field organizers with Palm Pilots to assist in communication between field organizers. This program has not yet gone into effect. All of the Florida field organizers attended this December conference, although they did not have any interaction beyond social gatherings. In September of each year, the Employer holds a weeklong training conference in either Chicago or Los Angeles for all field organizers who have been employed for at least six months and participated in at least one community organizing campaign. Because of their hire dates, none of the St. Petersburg employees have attended this training conference held each September. Finally, in most states, the Employer holds quarterly meetings for all of the field organizers in the state. The apparent primary purpose for these quarterly meetings is for training and to discuss related issues. The Employer has not yet held such meetings in Florida, but anticipates having the first such meeting in February 2002.

ACORN’s national board sets all personnel policies and all performance standards. These include an organizing model to assist field organizers in community campaigns and a lead organizer’s manual to assist supervisors in training field organizers. Similarly, all employees are paid on the same national payscale, based on seniority. However, this national payscale is adjusted for cost of living in various localities. In this regard, the national payscale provides that all first-year employees be paid an annual salary of \$18,000. This has been adjusted to \$20,000 for all of the first-year Florida employees. All employment benefits are also identical for all employees nationwide and administered by a subcontractor, Citizens Consulting Incorporated (CCI). Thus, if employees have questions about benefits, they contact CCI directly. All personnel files are maintained at the headquarters in New Orleans. Supervision of field organizers is exercised solely by head organizers assigned to their particular office. No evidence

was offered that there is any interchange of field organizers between offices on either a permanent or temporary basis.

## ANALYSIS AND CONCLUSIONS

Section 9(b) of the Act provides that the Board “shall decide in each case whether . . . the unit appropriate for the purposes of collective-bargaining shall be the employer unit, craft unit, plant unit, or a subdivision thereof.” In deciding the appropriate unit, the Board first considers the union’s petition and whether that unit is appropriate. **P.J. Dick Contracting**, 290 NLRB 150, 151 (1988). The Board has long held that a unit need not be the only appropriate or even most appropriate unit, but merely an appropriate unit. See e.g., **Overnite Transportation**, 322 NLRB 723 (1996); **Omni International Hotel**, 283 NLRB 475 (1987); **Hamilton Test Systems**, 265 NLRB 595 (1982); and **Morand Bros, Beverage Co.**, 91 NLRB 409, 418 (1950), enf’d on other grounds, 190 F.2d 576 (7<sup>th</sup> Cir. 1951).

With regard to unit determinations made regarding employees at single versus multi-location units, the Board has long applied the principle that a single facility is presumptively appropriate unless it has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity. See **Centurion Auto Transport**, 329 NLRB 394 (1999), **J & L Plate, Inc.**, 310 NLRB 429 (1993), and **Esco Corp.**, 298 NLRB 837 (1990). The presumed appropriateness of a single-location unit is rebuttable, however the burden is on the party opposing the appropriateness of the single-facility unit to present sufficient evidence to overcome the presumption. **J & L Plate**, supra, and **Red Lobster**, 300 NLRB 908, 910-911 (1990). To determine whether the presumption has been rebutted, the Board examines a number of community of interest factors, including bargaining history if any exists; central control over local operations and labor relations; the distance between locations; the extent of local autonomy; the similarity of employee skills and working conditions; and the

degree of employee interchange among the various locations. **First Security Services Corp.**, 329 NLRB No. 25 (1999), citing **D & L Transportation Inc.**, 324 NLRB 160 (1997) and **J & L Plate** and **Esco Corp.**, *supra*.

I find that the Employer has failed to rebut the presumption that the petitioned-for single facility unit in St. Petersburg is an appropriate unit. In this regard, the evidence presented by the Employer establishes that employment policies, performance standards, wages and benefits are actually established at the national level and apply to all field organizers throughout the United States. Moreover, employee skills, functions and working conditions throughout the country are the same regardless of the location. Additionally, all field organizers work similar hours, have similar duties and responsibilities and receive similar training. Thus, these factors lend little weight to the Employer's contention that a statewide unit is appropriate, as opposed to a St. Petersburg unit, since none of these items are established below the national level.

Rather, I conclude the existence of local supervision of the field organizers, the distances between the various Florida facilities, and the complete lack of interchange and interaction between the field organizers at the facilities in Florida support the presumption that the St. Petersburg operation is an appropriate unit. In this regard, each of the Florida facilities, including the office in St. Petersburg, has a head organizer, who is a statutory supervisory, to whom the field organizers report for day-to-day work assignments. The record establishes that these head organizers have and exercise the authority to interview and select applicants for hire after receiving approval from the national level to increase that office staff. The head organizers, including Allamanno in St. Petersburg, also have the authority to discipline and fire field organizers, although this is generally done in consultation with the state director and someone at the national level. The next level of supervision is state director McCoy who does not even reside in the state and who has only an arm's length relationship with all of the Florida offices.

The record is devoid of evidence of any temporary employee interchange or actual interaction among the field organizers at the four Florida facilities. Moreover, while it is possible for field organizers to request permanent transfers to any facility for personal reasons or



if the Employer is closing an office, there is no evidence that any of the Florida field organizers have done so. Finally there is a significant distance between the Employer's four Florida locations. In this regard, the closest facilities are Miami and Ft. Lauderdale, which are 25 miles apart. The St. Petersburg facility, which employs the petitioned-for employees, is more than two hundred miles from each of the other three Florida facilities.

Accordingly, I find that the Employer has not rebutted the presumption favoring single location units and that a unit limited to employees at the St. Petersburg operation is an appropriate unit.

There are approximately 3 field organizers in the unit found appropriate herein.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by Region 12 among the employees in the Unit found appropriate at the time and place set forth in the Notice of Election to issue subsequently, subject to the Board's Rules and Regulations.<sup>5</sup> Eligible to vote are those in the Unit who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are

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<sup>5</sup> Your attention is directed to Section 103.20 of the Board's Rules and Regulations. Section 103.20 provides that the Employer must post the Board's Notice of Election at least three full working days before the election, excluding Saturdays and Sundays, and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed. Please see the attachment regarding the posting of election notice.

employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by:

INDUSTRIAL WORKERS OF THE WORLD, IU 650

### LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses, which may be used to communicate with them. **Excelsior Underwear, Inc.**, 156 NLRB 1236 (1966); **NLRB v. Wyman-Gordon Company**, 394 U.S. 759 (1969); **North Macon Health Care Facility**, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the *full* names and addresses of all the eligible voters shall be filed by the Employer with the Undersigned, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the **Regional Office, National Labor Relations Board, 201 East Kennedy Blvd., Suite 530, Tampa, Florida 33602 on or before February 1, 2002**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

### **RIGHT TO REQUEST REVIEW**

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by **February 8, 2002**. In accordance with Section 102.67 of the Board's Rules and Regulations, as amended, all parties are specifically advised that the Regional Director for Region 12 will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.

Dated at Denver, Colorado this 25th day of January 2002.

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B. Allan Benson, Regional Director  
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